

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION**

THOMAS OTTER ADAMS (100612),)	
)	
Plaintiff,)	
)	
v.)	2:06-cv-873-ID
)	
WARDEN GWENDOLYN MOSLEY,)	
Et al)	
Defendants.)	

AMENDED SPECIAL REPORT

Come now the Defendants, **Gwendolyn Mosley, Lewis Hulett, Joel Tew, Daron Fayson, and Angela Brown**, by and through the Attorney General for the State of Alabama, and hereby amend their special report due to additional information being obtained as a result of this Court's request dated July 25, 2008:

EXHIBITS¹

Defendants submit the following exhibits:

1. Exhibit I – August 10, 2006 (9:30 a.m.) disciplinary report (Adams pushed Officer Tew)
2. Exhibit J – August 10, 2006 (9:00 a.m.) disciplinary report (Officer Tew confiscated various contraband items from Adams, including paint brushes and pastels)

PLAINTIFF'S ALLEGATIONS

According to Inmate Adams, on August 10, 2006, he was attacked by Officer Fayson, Officer Tew, Officer Brown and Sergeant Hulett. (Inmate Adams' complaint)

¹ The Defendants incorporate by reference all exhibits previously filed by the defendants in this cause.

Inmate Adams insinuates that he was attacked by the Officers because he is the jailhouse lawyer in the case of Ricky Davis v. Sergeant Bryant, et al. (See id., attachment-pg. 2)

ARGUMENT OF FACT AND LAW

This Court should enter a summary judgment in favor of the Defendants on the grounds that: the Plaintiff's excessive force claim is meritless and the Defendants are protected by sovereign and qualified immunity.

Statement of Facts

On August 10, 2006, Inmate Adams informed Officer Fayson that he was having chest pains. (Exhibit A, pg. 1) Officer Fayson informed Sergeant Hulett that Inmate Adams was having chest pains. See id. Sergeant Hulett asked Officer Fayson to escort Inmate Adams to the lobby. See id. Officer Brown and Officer Fayson escorted Inmate Adams to the lobby. See id.

While Inmate Adams was sitting in the lobby, Officer Joel Tew approached him and asked him to sit in the wheelchair. (Exhibit B, pg. 1) Inmate Adams proceeded to kick the wheel chair and stated: "Ya'll ain't going to do anything for me. Ya'll want me dead. Ya'll are making a big deal out of some pastel pencils and some pills." See id.; (Exhibit J) Inmate Adams refused to get in the wheelchair and started to walk towards the front door exit. (Exhibit B, pg. 2.) Officer Tew grabbed Inmate Adams and ordered him to stop and sit down in the wheelchair. See id. Inmate Adams charged at Officer Tew and pushed him against the wall. See id.; (Exhibit I) To protect himself, Officer Tew placed Inmate Adams on the floor. See id. After a struggle, Officer Brown, Officer Tew, and Sergeant Hulett placed Inmate Adams in the wheelchair and escorted him to the Health Care Unit. See id.

Plaintiff's claims of excessive force are without merit.

Inmate Adams contends that Officer Tew “brought a wheelchair in, began to berate [him], and said, “Get there (H.C.U.) the best way you can Adams.” At this point, “[Inmate Adams] became scared, frightened, and ***defensive***. [Inmate Adams] stood up to walk from the segregation unit to the H.C.U., and was seized, grasped and apprehended by COI Tew, picked up, and then body-slammed to the floor of the lobby, on [his] back, hand-cuffed behind [his] back, the breath was knocked out of [him]. [Inmate Adams] was then picked-up by Officers Tew, Fayson [and] Brown, assisted then by seg. Commander Sgt. Lewis Hulett.” (Inmate Thomas’s complaint, pg. 3)(emphasis added).

The Supreme Court follows a two-part test to determine whether a plaintiff has established a valid excessive force claim. Hudson v. McMillian, 503 U.S. 1, 20 (1992). This test is composed of both an objective and subjective component. Id. Inmate Adams’ excessive force claim cannot be maintained unless he establishes: (1) that he suffered an injury that was objectively serious enough to establish a constitutional violation, and (2) that subjectively, the Defendants acted maliciously or sadistically to cause him harm. Id.

A. Objectively serious injury

Inmate Adams contends that his wrist and back hurt as a result of the actions of the Defendants. On August 11, 2006, Inmate Adams has X-rays performed. The X-rays showed no recent fracture or “other significant bony abnormality.” (Exhibit G, pg. 1) The X-rays also showed no rib fracture. See id. Although Inmate Adams had to wear a wrist splint for two weeks, any injury to his wrist was caused by him when he defied the Defendants’ request to sit down in the wheelchair so that he could be taken to the health

care unit. (Exhibit F, pg. 1-4) If Inmate Adams had not become defensive ²and resisted the Defendants' direct orders to sit down and go to the health care unit, he would not have incurred an injury to his wrist. Furthermore, this alleged injury to Inmate Adams' wrist was minor; he only had to apply ice and wear a splint for two weeks. Courts of appeal have observed that injuries resulting from a similar usage of force alleged by Inmate Adams are too minor to support the objective prong of the excessive force test. See Markiewicz v. Washington, 1999 WL 196596 (7th Cir. 1999) (A bruised shoulder from being shoved into a wall does not evidence use of excessive force.); Siglar v. Hightower, 112 F.3d 191 (5th Cir. 1997) (A sore, bruised ear lasting three days does not evidence use of excessive force.); Riley v. Dotson, 115 F.3d 1159 (4th Cir. 1997) (A welt from a slap on the face does not evidence use of excessive force.); Williams v. Dehay, 1996 WL 128422 (4th Cir. 1996) (Transitory back and shoulder aches of limited duration do not evidence use of excessive force.); Schoka v. Swinney, 1995 WL 251126 (9th Cir. 1995) (A 1.5 inch scratch on the back of the hand from handcuffs does not evidence use of excessive force.); Lundsford v. Bennett, 17 F.3d 1574 (7th Cir. 1994) (Daily headaches without treatment, from being hit with a water bucket, does not evidence use of excessive force.); Norman v. Taylor, 25 F.3d 1259 (4th Cir. 1994) (A sore and swollen thumb from being hit with keys does not evidence use of excessive force.).

As for Inmate Adams' claim that he still has back pain, he admits that he has been informed that his back pain is due to arthritis. (Inmate Adams' complaint – attachment, pg. 2) This opinion is supported by Inmate Adams' X-ray results which state: "There is

² Inmate Adams, himself, admitted that he became defensive when ordered to sit in the wheelchair so that he could be taken to the healthcare unit. (Inmate Adams's complaint, pg. 3)

slight disc space narrowing identified at L4-L5 and L5-S1. Mild hypertrophic change is noted at L4-L5.” (Exhibit G, pg. 1) The Defendants can not be held responsible for the arthritis in Inmate Thomas’ back. Inmate Adams’ wrist injury is *de minimis* and his alleged back pain is caused by arthritis; therefore, Inmate Thomas’ excessive force claim is without merit.

B. Maliciously or sadistically

Even if, *arguendo*, this Court were to conclude that Inmate Adams had indeed incurred objectively serious injuries at the hands of the Defendants, Inmate Adams’ claim would still be without merit because he has not shown that the Defendants acted maliciously and sadistically to cause him harm. See Bozeman v. Orum, 422 F. 3d 1265, 1271 (11th Cir. 2005) quoting Brown v. Smith, 813 F.2d 1187, 1188 (11th Cir. 1987)(“whether or not a prison guard’s application of force is actionable turns on whether that force was applied in a good faith effort to maintain or restore discipline or maliciously or sadistically for the very purpose of causing harm”). The Supreme Court has set out five factors to determine whether or not a defendant acted maliciously or sadistically to cause harm: (1) the extent of the injury suffered, (2) the need for the application of the force, (3) the relation between the need for force and the amount of force actually used, (4) the threat reasonably perceived, and (5) any efforts to temper the severity of a forceful response. Hudson, 503 U.S. at 7.

Applying the Hudson factors to this case, the extent of the injury suffered by Inmate Adams was minimal, a sprained wrist. The application of force was an appropriate response to Inmate Adams’ resistance to a direct order to sit down. The force was needed to get Inmate Adams to obey a direct order to sit down. Inmate Adams’

refusal to sit down, as ordered, can be perceived as a serious threat to the health and safety of the officers in the direct vicinity of the inmate. Because the Defendants exerted just enough force to restore order and discipline and not maliciously and sadistically to cause Inmate Adams harm, Inmate Adams' excessive force claim is without merit and due to be dismissed. See McReynolds v. Ala. Dept. of Youth Services, 426 F. Supp. 1247, 1255 (M.D. Ala. 2006)("[A]bsent a showing of specific intent, the 'infliction of pain in the course of a prison security measure does not amount to cruel and unusual punishment . . .')")

This Court should enter a summary judgment for the Defendants because the Plaintiff's claims are not supported by sufficient evidence.

Rule 56 of the Federal Rules of Civil Procedure, provides that summary judgment shall be entered "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law."

When the movant makes a properly supported motion for summary judgment, the nonmoving party must provide specific facts showing the existence of a genuine issue of material fact for trial. See Fed. R. Civ. P. 56(e); Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 250 (1986); Celotex Corp. v. Catrett, 477 U.S. 317, 324 (1986). The nonmoving party may oppose the motion with any of the types of evidentiary materials listed in Rule 56(c) of the Federal Rules of Civil Procedure, except for its pleadings. Celotex, 477 U.S. at 324. The nonmoving party may not rest merely on its pleadings in opposing the motion. See F.R.Civ.P. 56(e); Celotex, 477 U.S. at 324. Summary judgment is properly entered when the party who will bear the burden of proof at trial

fails “to make a showing sufficient to establish the existence of an element essential to that party’s case.” Celotex Corp. v. Catrett, 477 U.S. at 322.

As previously stated, Inmate Adams failed to produce any evidence that he was maliciously or sadistically beaten by prison officials. Because Inmate Adams has failed to produce evidence that the Defendants used excessive force with malicious intent, Inmate Adams’s complaint is due to be DISMISSED.

Defendants Are Immune from Suit.

To the extent that the Defendants are sued in their official capacity, they are immune from liability. The Eleventh Amendment to the United States Constitution provides that “[t]he judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by citizens of another state, or by citizens or subjects of any foreign state.” The Amendment, therefore, not only bars suits against a state by citizens of another state, but it also bars suits against a state by that state’s own citizenry. See Edelman v. Jordan, 415 U.S. 651, 663 (1974); Hans v. Louisiana, 134 U.S. 1, 13-15 (1890).

The Eleventh Amendment also prohibits suit against state officials and employees where the state is the real, substantial party in interest. See Pennhurst State School & Hospital v. Halderman, 465 U.S. 89, 101-02, 104 (1984). “For example, if a lawsuit seeks to order the state officer to pay funds directly from the state treasury for the wrongful acts of the state, then the state is the real party in interest and the Eleventh Amendment bars the suit.” Summit Medical Associates, P.C. v. Pryor, 180 F.3d 1326, 1336 (11th Cir. 1999). This suit is in reality a suit against the State. Thus, the Defendants are absolutely immune.

Furthermore, Inmate Adams has made no specific claims against Warden Gwendolyn Mosley. The claims against Warden Mosley are, therefore, due to be dismissed on the ground that there is no respondeat superior liability in actions brought under 42 U.S.C. § 1983. See Dean v. Barber, 951 F.2d 1210 (11th Cir. 1992).

CONCLUSION

WHEREFORE, the above-cited facts and law are considered, the Defendants move this Honorable Court to DISMISS the Plaintiff's complaint.

Respectfully Submitted,

Troy King (KIN047)
Attorney General

/s/Bettie J. Carmack
Bettie J. Carmack (CAR-132)
Assistant Attorney General

CERTIFICATE OF SERVICE

I hereby certify that I have, this the 12th day of August, 2008, served a copy of the foregoing upon the Plaintiff, by placing same in the United States Mail, postage prepaid and properly addressed as follows:

**Inmate Thomas Otter Adams
AIS # 100612
5B-12 Segregation Unit
Easterling Correctional Facility
200 Wallace Drive
Clio, AL 36017**

/s/ Bettie J. Carmack

Bettie J. Carmack (CAR-132)

Assistant Attorney General

Office of the Attorney General

11 South Union Street

Montgomery, AL 36130

Telephone: (334) 353-5305

Facsimile: (334) 242-2433

EXHIBIT I

ALABAMA DEPARTMENT OF CORRECTIONS
DISCIPLINARY REPORT

DISC. #06-594

1. INMATE : Thomas Adams CUSTODY: Med. AIS NO.: W/100612
2. FACILITY: Easterling Correctional Facility
3. The above named inmate is being charged by Joel Tew, COI with violation of rule #29 specifically Assault on an ALDOC official, from regulation #403, which occurred on or about August 10, 2006 at (time) 9:30 AM; Location: Segregation Lobby. A hearing on this charge will be held after 24 hours from service.
4. Circumstances of the violation(s) are as follows:
You, Inmate Thomas Adams, W/100612, did push Officer Tew into the Segregation Lobby wall when he was attempting to sit you in a wheel chair.
5. August 10, 2006
Date Joel Tew COI
Arresting Officer / Signature / Rank
Joel Tew, COI
6. I hereby certify that I have personally served a copy of the foregoing upon the above named inmate and I informed inmate of his right to present a written or oral statement at the hearing and to present written questions for the witnesses on this the 10 day of Aug, 2006, at (time) 1:45 (am/pm).
7. Robert M. Kenner COI Thomas Adams
Serving Officer / Signature / Rank Inmate's Signature / AIS Number
8. Witnesses desired? NO YES Thomas Adams
Inmate's Signature Inmate's Signature
9. If yes, list: Ofc. FAYSON, Ofc. Brown and Sgt. Hulet
10. Hearing Date 9-29-06 Time 1:15pm Place Seg Office
11. Inmate must be present in Hearing Room. If he is not present explain in detail on additional page and attach.
12. A finding is made that inmate (is) (is not) capable of representing himself.
100612 Anthony Williams COI
Signature / Hearing Officer
13. Plea: Thomas Adams Not Guilty Guilty
14. The Arresting Officer, Inmate, and all witnesses were sworn to tell the truth.
Anthony Williams COI
Signature / Hearing Officer
15. Arresting Officer's testimony (at the hearing): We were trying to get Inmate Adams to the Health Care Unit because he was complaining of chest pains. I told him to sit in the wheel-chair. When I grabbed him, he started resisting. He snatched away from me and pushed me with his shoulder, into the wall. I was trying to get him to sit in the wheelchair so we could take him to HCU.

16. Inmate's Testimony: (Refer to attached statement).

Witness: [Signature] Substance of Testimony: I didn't see the entire incident. Officers Tew, Fayson, and Brown had Inmate Adams in the lobby. I had a wheelchair brought to SEG. Inmate Adams refused to get in the wheelchair. He attempted to walk to the SEG exit door. I didn't see when the incident happened, but I heard the struggle.

Witness: [Signature] Substance of Testimony: I brought Inmate Adams out to the lobby. At the time of the incident, I was in the office.

Witness: [Signature] Substance of Testimony: On the day in question, Officer Tew was trying to get Inmate Adams to HCU. Inmate Adams didn't want to go because he said it was taking too long. They brought the wheelchair. Inmate Adams* 17. The Inmate was allowed to submit written question to all witnesses. Copy of questions and answers are attached.

- [Signature]
Signature / Hearing Officer
- *kicked the wheelchair. Officer Tew told Adams that he had to go to HCU. Officer Tew grabbed Adams because he was resisting, and that's when Adams pushed Officer Tew, causing him to hit the wall.
18. The Following witnesses were not called - reason not called
- | | |
|---------------|------------|
| 1. <u>N/A</u> | <u>N/A</u> |
| 2. _____ | _____ |
| 3. _____ | _____ |

19. After hearing all testimony, the Hearing Officer makes the following findings of fact: (Be Specific)
The Hearing Officer finds that: On 08/10/06, at approximately 9:30 AM, in the Segregation Lobby, Inmate Thomas Adams, W/100612, did push Officer Tew into the Segregation Lobby wall when he was attempting to sit Inmate Adams in a wheelchair. Therefore, Inmate Adams was in violation of Rule #29-Assault On An ADOC Official.
20. Basis for Finding of Fact: Officer Joel Tew stated under oath that Inmate Adams did push him into the Segregation lobby wall. Officer Angela Brown's testimony supports COI Tew's testimony. Hearing officer believes the testimonies of Officers Tew and Brown.
21. Hearing Officer's Decision: X Guilty
Not Guilty
22. Recommendation of Hearing Officer: 45 Days Disciplinary Segregation and 45 days loss of all privileges.

[Signature]
Signature / Hearing Officer
Anthony Williams, COI
Typed Name and Title

23. Warden's Action - Date 07 OCT 2006
Approved [Signature]
Disapproved _____
Other (specify) _____

Reason if more then 30 calendar days delay in action. _____

25. I hereby certify that a completed copy of the foregoing Disciplinary Report was served on the above
Named inmate on this the 4 day of SEP 2006, at (time) 1202 (pm).

[Signature]
Signature / Serving Officer / Title

[Signature]
Inmate's Signature and AIS Number

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ALABAMA DEPARTMENT OF CORRECTIONS
NOTICE OF POSTPONEMENT OF DISCIPLINARY HEARING

Inmate's Name: THOMAS ADAMS AIS #: W/100612

Violation(s): #29, 56, 64

Notice is hereby given that your Disciplinary hearing which was scheduled on AUGUST 24, 2006 has
been rescheduled for UNTIL FURTHER NOTICE

Reason for rescheduling: ARRESTING OFFICER NOT AVAILABLE

Thomas Adams 100612
Inmate's Signature

John Henry CO1
Serving Officer's Signature

STATE OF ALABAMA
DEPARTMENT OF CORRECTIONS
MENTAL HEALTH SERVICES

MENTAL HEALTH CONSULTATION TO THE DISCIPLINARY PROCESS

STEP 1: ARRESTING OFFICER

Offense: RV# 29- Assault on an ADOC Official Today's Date: 9/11/06

Inmate Name: Thomas Adams AIS# 100612 Institution: Coaling C.F.

Is the inmate currently on the mental health caseload? Yes ? (go to step 3) No ? (next question)

If No, did you observe signs of psychological distress during the incident requiring a mental health referral? Yes ? (go to step 3) No ? (go to step 2)

Name of Arresting Officer: Joe L. COZ Shift: 1st Date of Incident: 9/10/06

STEP 2: HEARING OFFICER

Hearing officer must refer the inmate for mental health consultation if the inmate appears unable to understand what the charge is and what might happen as a result of the charge or the inmate appears unable to actively participate in the hearing as suggested by **NO** to any of the following:

- Inmate knows where he is?
- Inmate knows why he is seeing hearing officer?
- Inmate knows the date?
- Inmate is appropriately dressed
- Inmate is able to speak coherently?
- Inmate makes sense?
- The inmate's statements are logical and organized?

Should the inmate be referred for mental health evaluation of competency? Yes (go to step 3)

No (go to step 4)

Name of Hearing officer: Stephanie Brown COZ Referral Date:

STEP 3: MENTAL HEALTH STAFF

Date requested consult received: 9/11/06 Date consult returned: 9/15/06

Is the inmate competent to participate in the hearing? Yes No

If No, why is the inmate not competent? _____

If No, what treatment will assist the inmate in becoming competent? _____

Are there mental health issues that may have impacted inmate's behavior at the time of the charge? If yes, describe the issues: Yes No

Are there mental health issues to be considered regarding disposition if found guilty? If yes, describe the issues and the relation to the disposition: Yes No

Do mental health staff members wish to be present at the disciplinary hearing to provide input? Yes No

Mental Health Staff Member: V. White Phone: 365

STEP 4: REVIEW

Have the mental health recommendations been considered?

Hearing Officer: Anthony Williams Date: 9-27-06

INMATE NAME: Adams Thomas

AIS #: 100612

Disposition: Inmate Medical Record and Institutional Inmate file

Reference: ADOC AR: 623, 626, 632, 633, 635
ADOC Form MH-041 - November 14, 2005

AUGUST 14, 2006

RE: VIOLATION OF RULE #29

STATEMENT, PURSUANT TO III E, IV G, H,
ADMIN. REG. 403TO THE HEARING OFFICER Anthony Williams

I AM THOMAS ADAMS - 10062, CAPABLE
AND ABLE TO MAKE THIS STATEMENT, I
AM OVER 21 YRS OLD, THIS STATEMENT
IS MADE PURSUANT TO 28 USC § 1746(e),

CHARGING ME WITH RULE #29 VIOLATION IS
AN ATTEMPT BY COL JOEL TEW TO COVER-UP
OR CONCEAL THE CHARGE OF OFFICER
MIS-CONDUCT, I.E. ASSAULT, EXCESSIVE
FORCE.

I MAINTAIN WHAT COL JOEL TEW HAS
MANUFACTURED AND FABRICATED A LIE,
TO AVOID AN INVESTIGATION, REPRIMANDS
ETC. TO THE CHARGE OF EXCESSIVE FORCE.

I ALLEGE THAT COL JOEL TEW HAS
CONSPIRED WITH SGT. HULOTT, COL FAYSON,
AND COL BROWN TO COVER-UP THIS
INCIDENT AND TO RETALIATE AGAINST
ME.

COL TEW IS A VETERAN CORRECTIONAL
OFFICER WHO AFTER 17 YRS OF STATE

REMAINS AT THE RANK OF COL, JEL YEW IS TRAINED & SKILLED AT PRODUCING A DECEPTIVE, MISLEADING, AND FALSIFYING STATEMENT OF DISCIPLINARY CHARGES AND REPORTS, A POLYGRAPH TEST WILL PROVE THE TRUTH OF THIS ALLEGATION.

COL FAYSON AND COL BROWN ARE DEFENDANTS IN CIVIL ACTION - 2:05-CV-0352, MHT - THOMAS ADAMS VS. BRENDON MOSLEY, ET AL., MIDDLE DISTRICT, ALABAMA.

IN THE SAME ACTION I HAVE REQUESTED OF THE FEDERAL COURT TO BE ALLOWED TO ADD, SGT. LEWIS NULETT, COL JEL YEW. I.E. FAILURE TO TRAIN AND SUPERVISE, ASSAULT, EXCESSIVE FORCE, VERBAL ABUSE, INTIMIDATION AND THREATS.

THIS INMATE WAS COMPLAINING OF CHEST PAINS, BEING COMMON AMONG PEOPLE WHOSE HAD BY-PASS SURGERY AND STENTS IN THE HEART. I HAD BEEN REMOVED FROM CELL SB-16 AND WAS SITTING IN THE LOBBY OF 5 DORM.

I WAS HAND-CUFFED BEHIND MY BACK, BY COL FAYSON.

THE PRISON HEALTH SERVICES PROVIDES THE MINIMUM EFFORT TO ME AS A CORONARY / HEART PATIENT (2)

AT THIS TIME ON 8-10-2006, I WAS VERY WEAK HAVING TAKEN 4-5 NITROGLYCERIN TABLETS, USP, 0.4 mg in a FIFTEEN TO TWENTY MINUTE UNIT.

I FURTHER MAINTAIN THAT SGT. HULETT, COI FRAYSON, COI BROWN STOOD BY AND WITNESSED THIS EVENT, KNOWING BETTER, FAILED TO TAKE ANY ACTION(S) TO STOP COI TELL, FROM SLAMMING ME IN THE SEC. LOBBY FLOOR, CAUSING ABRASIONS TO MY BACK, DRAINING KIDS, I AM NOW ORDERED BY A DR. TO WEAR A SPLINT ON MY R. WRIST, WHICH WAS X-RAYED ON 8-11-2006 AT E.C.F.

EACH OF THESE PERSONS ARE WELL AWARE THAT I AM WHO'S PERSONAL TO AS A "JAILHOUSE LAWYER". THAT I FILED FOR/WITH RICKY DAVIS - 173073. VS. GWENDOLYN MOSLEY, WARDEN III, ET. AL. - CASE NO. 2:06-CV-10-MEF DISTRICT COURT / MIDDLE-ARIZONA, IN WHICH SGT. ROBERT BRYANT, ADOC, 3RD SHIRT E.C.F. WAS BOTH EITHER FIRED, RESIGNED, OR DEMOTED AND TRANS FERRED FOR EXCESSIVE FORCE.

(3)

SGT. BRYANT WAS A FELLOW OFFICER OF COI TAW,
COI FRAYSON, COI BROWN. AND SGT. HILBERT,

I HAVE NEVER ASSAULTED DOC PERSONNEL
OF ANY RANK OR POSITION, REGARDLESS
OF RACE, RELIGION OR GENDER.

I DID NOT ASSAULT, ASSAIL, STRIKE,
ADVANCE, OR BY ANY OTHER TERM OR
DEFINITION HARM OR EVER ATTEMPT
TO HARM COI JOEL TAW.

UNDER THE PENALTY OF PERJURY, DONE
THIS 14 DAY OF AUGUST, 2006

Thomas Adams

THOMAS ADAMS - 100612

SB-16 SEC. UNIT.

200 WALLACE DRIVE.

CLIO, ALABAMA

36017

QUESTIONS TO OFFICER BROWN

OFFICER BROWN WERE PRESENT IN THE LOBBY ON 8-10, DURING THIS INCIDENT?

IF THIS IS THE DATE OF THE INCIDENT. YES

OFFICER BROWN - DID YOU WITNESS AND/OR SEE IDWATE ADAMS POSH COI VIEW?

YES

OFFICER BROWN - WAS IDWATE ADAMS HAND-CUFFED? BEHIND HIS BACK?

YES

OFFICER BROWN - WAS IDWATE ADAMS COMPLAINING OF CHEST PAINS?

YES

I CONTEND THAT HUMAN DEINGS ARE NOT VERY ACCURATE OR TRUTHFULL, BUT, A POLYGRAPH IS MORE THAN 95% ACCURATE.

IN ORDER TO DISCOVER WHO IS LYING AND WHO ISN'T, WILL YOU SUBMIT TO A POLYGRAPH TEST?

AUGUST 14, 2007

RE: ROLES# 29 - QUESTIONS

PURSUANT TO ADMIN. REG.#403, - II D

SET. HULITT, DID INMATE ADAMS, PUSH,
COI TEW, I did not see it

SET. HULITT - DID COI TEW TELL INMATE
ADAMS, "GET WHERE THE BEST WAY YOU
CAN"! I did not hear that.

SET. HULITT. DID INMATE ADAMS WALK
TO THE SEGREGATION DOOR?
Yes

COI FAYSON - DID INMATE ADAMS, PUSH,
COI TEW? I was in the office.

COI FAYSON. WAS INMATE ADAMS AT
ALL TIMES HAND-CUFFED? BEHIND
HIS BACK? We put them to the front when
we got to the lobby

COI FAYSON. DID COI TEW SLAM INMATE
ADAMS TO THE SEGREGATION FLOOR?

I have no knowledge.

COI FAYSON - DID YOU HELP/ASSIST IN
PICKING INMATE ADAMS UP FROM THE FLOOR?

(P) no I was in the office

EXHIBIT J

ALABAMA DEPARTMENT OF CORRECTIONS
DISCIPLINARY REPORT

DISC. #06-596

1. INMATE: Thomas Adams CUSTODY: Med. AIS NO.: W/100612
2. FACILITY: Easterling Correctional Facility
3. The above named inmate is being charged by Joel Tew, COI with violation of rule #64 specifically Possession of contraband, from regulation #403, which occurred on or about August 10, 2006 at (time) 9:00 AM. Location: Segregation, cell 5B-16. A hearing on this charge will be held after 24 hours from service.
4. Circumstances of the violation(s) are as follows:
You, Inmate Thomas Adams, W/100612, did have 4-pieces of razor blade, 1-double bladed pencil sharpener, 1-state issued belt buckle, 1-bandaid, 10-rolls of string, 1-box of used artist pastels (chalk crayons), 3-pieces of ruler, 1-inmate made artist brush, and 6-600mg Lipid pills, that were found and confiscated by Officer Tew during a shakedown. You admitted to Officer Tew that the items were yours.
5. August 10, 2006
Date Joel Tew COI
Arresting Officer / Signature / Rank
Joel Tew, COI
6. I hereby certify that I have personally served a copy of the foregoing upon the above named inmate and I informed inmate of his right to present a written or oral statement at the hearing and to present written questions for the witnesses on this the 10 day of Aug, 2006, at (time) 1:58 (am/pm).
7. Robert McKinzie COI Thomas Adams
Serving Officer / Signature / Rank Inmate's Signature / AIS Number
8. Witnesses desired? NO Thomas Adams
Inmate's Signature Inmate's Signature
9. If yes, list: Off. Fayson, Sgt. Hurlett and inmate Gary Christopher
10. Hearing Date 9-29-06 Time 2:25 pm Place Seg Office
11. Inmate must be present in Hearing Room. If he is not present explain in detail on additional page and attach.
12. A finding is made that inmate (is) is not) capable of representing himself.
13. Plea: 100612 Anthony Williams COI
Thomas Adams Not Guilty _____ / Guilty
Signature / Hearing Officer
14. The Arresting Officer, Inmate, and all witnesses were sworn to tell the truth.
Anthony Williams COI
Signature / Hearing Officer
15. Arresting Officer's testimony (at the hearing): On the day in question, Inmate Adams had in his possession, four pieces of razor blades, one double edged pencil sharpener, one state issued belt buckle, one Band-Aid, ten rolls of string, one box of used Artist pencils (crayons), three pieces of a ruler, one inmate-made Artist brush, and six 600mg Lipid pills that were found during a routine shakedown.

16. Inmate's Testimony: (See statement).

Witness: Darr J. [Signature], COI Substance of Testimony: Officer Tew and myself conducted a routine shakedown and confiscated the items.

Witness: [Signature] COI Substance of Testimony: I was not there when Officers Tew and Fayson conducted their shakedowns.

Witness: N/A Substance of Testimony: N/A

17. The Inmate was allowed to submit written question to all witnesses. Copy of questions and answers are attached.

Anthony Williams COI
Signature / Hearing Officer

18. The Following witnesses were not called

reason not called

1. Inmate Gary Christopher Waived from hearing by defendant.
2. N/A N/A
3.

19. After hearing all testimony, the Hearing Officer makes the following findings of fact: (Be Specific)

The Hearing Officer finds that: On 08/10/06, at approximately 9:00 AM, in Segregation, Cell 5B-16, Inmate Thomas Adams, W/100612, did have in his possession, four (4) pieces of razor blade, one (1) double edged pencil sharpener, one (1) state issued belt buckle, one (1) Band-Aid, ten (10) rolls of string, one (1) box used Artist pastels (crayons), three (3) pieces of rule, one (1) inmate-made Artist brush, and (Con't)

20. Basis for Finding of Fact: Officer Joel Tew stated under oath that he conducted a routine shakedown of Cell 5B-16, and found four (4) pieces of razor blade, one (1) double-edged pencil sharpener, one (1) state issued belt buckle, one (1) Band-Aid, ten (10) rolls of string, one (1) box used Artist pastels (crayons), three (3) pieces of ruler (Con't)

21. Hearing Officer's Decision: X Guilty
 Not Guilty

22. Recommendation of Hearing Officer: 45 Days Disciplinary Segregation and loss of all privileges.

*Inmate not earning good time.

Anthony Williams COI
Signature / Hearing Officer
Anthony Williams, COI
Typed Name and Title

23. Warden's Action - Date 02 OCT 2006

Approved [Signature]
Disapproved

Other (specify) All disciplinary segregation time is to run concurrent with Disciplinary Report #00-594 and #00-595

Reason if more than 30 calendar days delay in action.

25. I hereby certify that a completed copy of the foregoing Disciplinary Report was served on the above Named inmate on this the 4 day of SEPT 2006, at (time) 1200 (am / pm).

Darr J. [Signature], COI
Signature / Serving Officer / Title

Thomas Adams - 100612
Inmate's Signature and AIS Number

**ALABAMA DEPARTMENT OF CORRECTIONS
DISCIPLINARY REPORT (OPTIONAL)**

Inmate Name /AIS Number Thomas Adams, W/100612 Incident Report No. ECF-06-

Facility : Easterling Correctional Facility

CONTINUED ARRESTING OFFICER'S (AO) STATEMENT AND/OR QUESTION BY HEARING OFFICER
(QBHO) TO ARRESTING OFFICER: N/A

CONTINUED INMATE'S STATEMENT AND/OR QUESTIONS BY HEARING OFFICER (QBHO) TO
INMATE: N/A

CONTINUED WITNESS TESTIMONY (QBHO): N/A

CONTINUED FINDINGS OF FACTS: six (6) 600mg Lopid pills. Therefore, Inmate Adams was in violation of
Rule #64-Possession of Contraband.

CONTINUED BASIS FOR FINDING OF FACT: one (1) inmate-made Artist brush, and six (6) 600mg Lopid
pills. Also, Inmate Adams did admit to hearing officer that he had the Lopid pills in his possession (refer to
statement).

STATE OF ALABAMA
DEPARTMENT OF CORRECTIONS
MENTAL HEALTH SERVICES

MENTAL HEALTH CONSULTATION TO THE DISCIPLINARY PROCESS

STEP 1: ARRESTING OFFICER

Offense: RIV#64 - Possession of Contraband Today's Date: 9/11/06
 Inmate Name: Thomas Adams AIS# 100612 Institution: Eastview C-9
 Is the inmate currently on the mental health caseload? Yes ? (go to step 3) No ? (next question)
 If No, did you observe signs of psychological distress during the incident requiring a mental health referral? Yes ? (go to step 3) No ? (go to step 2)
 Name of Arresting Officer: Paul Jew, COI Shift: 13 Date of Incident: 8/10/06

STEP 2: HEARING OFFICER

Hearing officer must refer the inmate for mental health consultation if the inmate appears unable to understand what the charge is and what might happen as a result of the charge or the inmate appears unable to actively participate in the hearing as suggested by NO to any of the following:

- Inmate knows where he is? • Inmate knows why he is seeing hearing officer? • Inmate knows the date?
- Inmate is appropriately dressed • Inmate is able to speak coherently? • Inmate makes sense?
- The inmate's statements are logical and organized?

Should the inmate be referred for mental health evaluation of competency? Yes (go to step 3) No (go to step 4)

Name of Hearing officer: Stephanie Brown, COI Referral Date: _____

STEP 3: MENTAL HEALTH STAFF

Date requested consult received: 9/11/06 Date consult returned: 9/15/06
 Is the inmate competent to participate in the hearing? Yes No

If No, why is the inmate not competent? _____

If No, what treatment will assist the inmate in becoming competent? _____

Are there mental health issues that may have impacted inmate's behavior at the time of the charge? If yes, describe the issues: Yes No

Are there mental health issues to be considered regarding disposition if found guilty? If yes, describe the issues and the relation to the disposition: Yes No

Do mental health staff members wish to be present at the disciplinary hearing to provide input? Yes No

Mental Health Staff Member: V. W. H. MS Phone: 305

STEP 4: REVIEW

Have the mental health recommendations been considered? Yes No

Hearing Officer: Anthony W. Thomas Date: 9-29-06

INMATE NAME: Adams Thomas

AIS #: 100612

Disposition: Inmate Medical Record and Institutional Inmate file

Reference: ADOC AR: 623, 626, 632, 633, 635
 ADOC Form MH-041 - November 14, 2005

ALABAMA DEPARTMENT OF CORRECTIONS
NOTICE OF POSTPONEMENT OF DISCIPLINARY HEARING

Inmate's Name: THOMAS ADAMS AIS: W/100612

Violation (s): #29, 56, 64

Notice is hereby given that your Disciplinary hearing which was scheduled on August 24, 2006 has been rescheduled for UNTIL FURTHER NOTICE

Reason for rescheduling: ARRESTING OFFICER NOT AVAILABLE

THOMAS ADAMS 100612
Inmate's Signature

John Chum CO1
Serving Officer's Signature

Annex D to AR 403

24 of 24

AR 403 January 30, 2003

August 15, 2006

RE: STATEMENT, PURSUANT TO III E, II C, H

ADMIN. REG. # 403

TO THE HEARING OFFICER Anthony Williams COL

I AM THOMAS ADAMS-100612, CAPABLE AND ABLE TO MAKE THIS STATEMENT, I AM OVER 21 YRS. OLD, THIS STATEMENT IS MADE PURSUANT TO 28 USC. § 1746(2).

I DID ADMIT TO COL TAYLOR THAT THESE ITEMS WERE MINE AND I STILL DO.

ON 6-28-06 I WAS TAKEN FROM SEC. UNIT TO TROY HOSPITAL AND JACKSON HOSPITAL.

AT MY ABSENCE, COL FAYSON ORDERED THE (2) UNITS IN SB-8 TO PACK ALL OF MY PROPERTY, WHICH THEY DID,

EACH OF THESE ITEMS WERE IN MY PROPERTY THEN AND HAD BEEN FOR SEVERAL MONTHS, ITEMS WHICH WERE ACCUMULATION OVER MANY MONTHS OF CONFINEMENT IN SEC REGATION.

WITH THE EXCEPTION OF 6-600 MG. LIPID PILLS, FOR CHOLESTEROL.

THIS ALLEGED INCIDENT WAS/HAD OCCURRED ON 8-10-2006 @ 9:00 AM

①

STATEMENT CONT. - PAGE #64

I MAINTAIN THAT AS OF THE DATE OF THIS FILING, THERE HAVE BEEN NO SUCCESSIVE SHAKE DOWNS, BY A 1ST SHIFT OFFICER ON S DORM B SIDE.

I FURTHER MAINTAIN THAT THE GOAL OF THIS CONSPIRACY HAS BEEN ACCOMPLISHED, THAT THERE IS NO FURTHER INTENT, EXCEPT TO HARASS THIS DAILHOUSE LAWYER.

I CONTEND THAT WHEN I ARRIVED BACK AT E.C.F. ON 7-7-2006, WAS PLACED BACK IN SEQUESTRATION, CELL 5B-16, AND EACH PIECE OF PROPERTY THAT IS NOW LISTED AS "CONTRABAND" BY CO 1 TEO WAS GIVEN BACK TO ME BY AN OFFICER.

THERE WAS NO RECEIPT GIVEN FOR ANY PROPERTY THAT WAS TAKEN, CONTRABAND OR NOT, I.E. A CALENDAR, PHOTOS, PENCILS, ERASERS, HEAD PHONE JACK, SOAP CACKINGS,

CO 1 TEO TEO, CONTINUES TO WHEN USUALLY HARASS ME AT EACH PILL-CALL, IN AN EFFORT TO PROVOKE ME AND STRESS OUT A HEMER-PATIENT.

SGT. VELDT CONTINUES TO FAIL IN TRAINING OR SUPERVISING HIS EMPLOYEE CO1 TEO TEO.

(2)

AUGUST 15, 2006

RE: ROCE # 64. QUESTIONS

PURSUANT TO ADMIN. REG. # 403, - II D

SQT. HULETT - WERE YOU PRESENT DURING THIS SHAKEDOWN? NO

SQT. HULETT - WAS THERE ANY CONVERSATION / ARGUMENT BETWEEN YOU AND INMATE ADAMS?
I wasn't there

SQT. HULETT, ARE YOU AWARE OF ANY MEDICAL CONDITIONS OF INMATE ADAMS? NO

SQT. HULETT, ARE YOU RESPONSIBLE FOR THE TRAINING AND SUPERVISION OF COI TEW?
Yes

SQT. HULETT - IS COI TEW ALLOWED ANY TYPE OF CONTACT WITH INMATE ADAMS?
Yes

SQT. HULETT - PURSUANT TO ADMIN. REG. # 433, IV A. (1), COI TEW HAS BECOME INEFFECTIVE AND COUNTER-PRODUCTIVE TO ANY REHABILITATION EFFORTS AND/OR GOALS, WHY IS HE (COI TEW) STILL WORKING SQ9 REGISTRATION?
NO. OFC TEW DOES A GOOD JOB AS A SQ9 OFFICER

(1)

QUESTIONS - CONTIN - # 64

COL FAYSON - WERE YOU PRESENT DURING ANY OF THE INCIDENTS? DURING THE SHAKEDOWN

COL FAYSON - TO YOUR KNOWLEDGE HAS THERE BEEN ANY SHAKEDOWNS, BY A 1ST SHIFT OFFICER, SINCE 8-10-2006, ON B-SIDE SEC? YES THERE HAVE BEEN SHAKEDOWNS

COL FAYSON - PREVIOUS TO THIS DATE, 8-10-06, HAVE YOU AND/OR COL JEFFREY EVER BEEN ACCUSED OF EXCESSIVE FORCE, ASSAULT ON AN INMATE? NO

COL FAYSON - ARE YOU AWARE OF ANY MEDICAL OR MENTAL HEALTH CONDITIONS OF INMATE ADAMS?
Heart Problems

COL FAYSON - IN SEARCHING INMATE ADAMS CELL, AND TAKING OF PROPERTY, WAS ANY RECEIPT REQUIRED OR GIVEN? WE DON'T GIVE RECEIPTS OF CONTRABAND. IT IS NOT REQUIRED.

COL FAYSON - IS THERE A VISIBLE SECURITY INTEREST IN CONTRABAND, A CALENDAR, PHOTOS, PENCILS, ERASERS, HEAD PHONE JACK, LEGAL DOCUMENTS, SOAP CACKINGS, PENCIL SHARPENER, ARTIST PASTELS, A BROKEN PLASTIC RULER?

(C) Rulers and Pencil sharpeners are not allowed. ... are not allowed.

STATEMENT OF THOMAS ADAMS - 100612

PURSUANT TO ADMIN. REG. #403, - III E,
 III G, H., and IV - PROCEDURES DURING
 HEARING

DISCIPLINARIES 29, 56, 64, COI TOW - 8-10-2006

I AM THOMAS ADAMS, I AM OVER 21 YEARS
 OLD, CAPABLE AND ABLE TO MAKE THIS
 STATEMENT, PURSUANT TO 18 USC § 1746(z),
 UNDER THE PENALTY OF PERJURY.

I WAS SERVED THREE (3) DISCIPLINARIES
 ON 8-10-2006, BY COI ROBERT MCKINIS
 AT CELL 5B-16 SEQUESTRATION UNIT, E.C.F.
 APPROX. 1:47 PM.

I WAS SERVED A NOTICE OF POSTPONEMENT
 OF DISCIPLINARY HEARING, ON 8/23/06, BY
 COI JOAN IVY, AT CELL 5B-16, SEQUESTRATION
 UNIT, E.C.F. WHICH IN PETITIONANT PART
 SAYS, RESCHEDULED FOR - UNTIL FURTHER NOTICE.
 THIS "NOTICE" INCLUDED ALL THREE ALLEGATIONS
 OF # 29, 56, AND 64.

I MAINTAIN THAT THE ADOC'S OWN
 ADMINISTRATIVE REGULATION - # 403, II,

STATEMENT CONTINUED~

PROVIDES IN RELEVANT PART. - "if there is a need to postpone or reschedule the hearing, Form 225 D, NOTICE OF A POSTPONEMENT OF DISCIPLINARY HEARING (ANNEX D) SHOULD BE COMPLETED, ADVISING THE INMATE OF THE RESCHEDULED DATE AND PERSON FOR DELAY."

I MAINTAIN THAT, "MAIL FURTHER NOTICE", IS WHOLLY INSUFFICIENT, AND AS IS NOTED IN;

GILLO V. COOGLIN, 31 F.3D. 53, 56 (1994)
AN "INADEQUATE NOTICE", DENIES DUE-PROCESS, EVEN IF THE PRISONER GOES FORWARD AT THE HEARING AND TRIES TO PRESENT A DEFENSE. (p. 56)

HEWITT V. HELMS, 459 U.S. 460, 472 (1983)
PROVIDES, "A PRISONER PLACED IN ADMIN. SEG. MUST BE HEARD WITHIN A 'REASONABLE TIME' AFTER CONFINEMENT."

A U.S. SUPREME COURT CASE

STATEMENT CONTINUED-

WALKER F. 3D. 1415, (1994) - "WHERE THE STATE (D.O.C.), SETS OUT A LIST OF OFFENSES FOR WHICH PUNISHMENTS MAY BE IMPOSED, REQUIRES NOTICE AND A HEARING, AND SETS OUT THE PUNISHMENTS, IT (STATE) CREATES A 'LIBERTY INTEREST' IN REMAINING FREE FROM ARBITRARY PUNISHMENT IN DISCIPLINARY SEGREGATION."

FURTHER MORE, IT IS MY CONTENTION THAT COL LUTY, A VETERAN OFFICER, KNOWS FULL WELL THAT HIS ACTIONS, THE NOTICE OF POST PUNISHMENT, THE WORDING, VIOLATES THIS PRISONER'S DUE-PROCESS, AS IS MAINTAINED IN ADMIN. REC. # 403, AND IN A QUANTER SENSE, THIS PRISONER'S PROTECTIONS AS ARE GUARANTEED BY THE U.S. CONSTITUTION 14TH AMENDMENT!

MORE OVER, I FIRMLY MAINTAIN THAT THESE DISCIPLINARY HEARINGS ARE BEING HELD ILLEGAL, THAT TO PROCEED TO AN ADVERSE FINDING OF GUILTY IS TO MAKE JUSTICE A MOCKERY AND SHAM!

LEGAL USE ONLY

STATEMENT CONTINUED -

THAT TO ATTEMPT TO FURTHER COMPLICATE, MIX UP, THE CONDITIONS THAT THIS PRISONER IS PRESENTLY HELD IN, KNOWING FULL WELL THE RECENT MEDICAL INCIDENTS, OF THIS PRISONER, IS TO CLEARLY EXAMPLE HARSH, CRUEL AND UNUSUAL PUNISHMENTS, WHICH FURTHER VIOLATES THE PROTECTIONS OF THE CONSTITUTIONS 8TH AMENDMENT!

I MAINTAIN THAT THE "NOTICE OF POSTPONEMENT" IS VOID, INVALID, NOT SANCTIONED BY THE A D O C, IN THIS HEARING, THAT IT IS FORTHLESS AND NOT CREDIBLE, THE ONLY PURPOSE TO COMPLICATE AND CONFOUND THIS HEARING, SOLELY FOR THE PURPOSE TO CREATE A DELAY AND HINDERANCE TO THE ORDERLY OPERATION OF THIS INSTITUTION.

BASICALLY, SUBJECTING THE OFFICIALS, OFFICERS, EMPLOYEES INVOLVED TO A CIVIL LIABILITY.

DONE THIS 24TH DAY OF AUGUST, 2006

Thomas Adams - 100612

THOMAS ADAMS -

SB-16 SEC. UNIT

E.C.F.

(4)